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DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 98-0737; 98-0736; 01-980734
Gross Retail Sales and Income Taxes
Calendar Years 1994, 1995, and 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Sales Tax – Assessment:** – Best Information Available (BIA)

Authority: IC 6-2.5-2-1; IC 6-2.5-3-2; IC 6-2.5-3-6(b),(c); IC 6-2.5-4-1(b); IC 6-2.5-6 et seq., IC 6-8.1-5-1(a); IC 6-8.1-5-1(b); IC 6-8.1-5-4(a); 45 IAC 2.2-2-2.

Taxpayer protests the auditor's BIA method of calculating gross retail income and the auditor's BIA determination of the rate of markup used in calculating taxable sales.

STATEMENT OF FACTS

Taxpayers are husband and wife who owned and operated one each of two licensed package liquor stores. Various records related to the business were lost, and at the time of the audit the auditor completed a "best information available" audit.

The auditor focused on vendor records for product supplied to the taxpayers, then extrapolated an estimate of taxpayers' retail sales based on taxpayers records that were available, published ratios from the *Almanac of Business and Industrial Financial Ratios* authored by Leo Troy, Ph.D., 1997 Edition, Prentice Hall, and income tax returns with supporting schedules, (1994 IT-40 only, no Federal information, 1995, and 1996).

The auditor calculated an error factor based upon records from one of the taxpayers' liquor distributors and the taxpayers' records for 1995 and 1996. No records were made available for 1994; therefore, an average of 1995 and 1996 was utilized. (Basis and reasons for the calculation is contained on page 5-6 of the audit report) Taxpayers' records did not coincide with the "reporting distributor's" amounts. Auditor states that the taxpayers insisted that all purchases were made solely at one location, however, the distributor's records indicate otherwise.

It was necessary for audit to extrapolate the information provided by year to determine net

04980736.SLOF
01980734.SLOF
04980737.SLOF
PAGE #2

income by year and to account for months in which no information was available.

Because the taxpayers had a limited number of purchase invoices available for review, the audit proposed an adjustment to cost of goods sold based on items purchased during the audit period by utilizing a vendor's information and calculating the error factor for those purchases with taxpayers' records for that vendor.

The records would indicate that the auditor employed, in a conscientious and professional manner, the best available records and source materials to produce the BIA assessments. Taxpayers were invited to contribute additional substantive information or to rebut the audit's conclusions with concrete information. Taxpayers' CPA, instead states, that as the concrete information was unavailable, he has reconstructed taxpayers' records based on taxpayers' bank records.

1. Sales Tax – Best Information Available

DISCUSSION

Taxpayers protest the assessment and state their records were incomplete because they experienced a basement flood in 1995, which destroyed some of the records. At hearing, Taxpayers' CPA provided additional facts, observations, and conclusions he reached to support the reconstruction of taxpayer's 1994 through 1996 records and provided the hearing officer with supporting summaries and what documentation was available.

Taxpayers admit that they may owe additional taxes. However, taxpayers protest the means by which audit determined the amount of income tax owed. Taxpayers disagree with audit's determination of the base amount of its gross retail income and error factors. Taxpayers contend that the mark-up in an economically depressed area never generated the quantity of sales estimated by the auditor. Further, taxpayers contend that the calculated error factor determined by audit is a wholly unrealistic estimate of the actual sales of their business. Taxpayers' representative contends that the audit rate of 22.5% conflicts with the published ratios from the *Almanac of Business and Industrial Financial Ratios* rate of 4.5%.

In plain straightforward language, IC 6-8.1-5-1(a), authorizes the Department, if it reasonably believes that a taxpayer has not reported the proper amount of tax due, to make a proposed assessment of unpaid tax on the basis of the best information available to the department. Audit's BIA determinations were made necessary by taxpayers' failure to maintain or provide pertinent information, records, or invoices.

Under IC 6-8.1-5-4(a), "Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by

04980736.SLOF
01980734.SLOF
04980737.SLOF
PAGE #3

reviewing those books and records.” The records referred to “include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and cancelled checks.”

The audit was conducted in the absence of complete records of taxpayers’ sales, purchases and expense records. The business records supplied to the auditor were not complete.

In attempting to rebut the assessment, taxpayers stated that audit’s determination and methods were “grossly misrepresentat [ive]” inaccurate and based upon standards that were inapplicable to this taxpayer. Taxpayers’ CPA stated that his own investigation found that the markup was highly overstated. Taxpayers provided plausible inferential information as to why a lower assessment could be appropriate, but have failed to provide sufficient evidence of error by the Department to warrant a reversal of the Department’s original assessment.

By failing to present any concrete evidence of taxpayers’ financial activity, the taxpayers have failed to meet their burden of proof, imposed under IC 6-8.1-5-1 (b), to rebut the presumptive validity afforded the Department’s proposed sales tax assessments.

The Department’s proposed assessment, under IC 6-8-1-5-1 (b), is deemed to be “prima facie evidence that the department’s claim for the unpaid tax is valid.” That same section of the Indiana Code goes on to state that “the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.”

FINDING

Taxpayers’ protest is respectfully denied.